

The Most Precious Freedom



Robert Osborn

By SAM J. ERVIN Jr.

WASHINGTON — There are some holding power of government who heed false prophets. They have forgotten that the most precious freedom secured to the individual by our Constitution is the privacy of his mind, the freedom of his thought and the sanctity of his conscience.

They have forgotten what Oliver Wendell Holmes so wisely stated, that "if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate."

They have forgotten the reverence which is due the principle on which our Constitution is based, namely, that man is a rational being, endowed by the Creator with the faculties for making rational decisions about his own destiny.

They would sacrifice these principles to the ends of government for short-term purposes.

I have no quarrel with the right of these individuals to hold these views.

But I am alarmed to see them applied to government programs which may do violence to constitutional principles.

There have been a number of such programs with which I take issue. These are predicated on the theory that if government officials can only acquire sufficient information in advance on individuals, then they can predict and control behavior. So they seek to learn about how they think; how they behave in their personal lives; how they cut their hair; what they read; what their conduct and attitudes are in sexual matters; how they relate to their parents; what they dream about, and many other details.

These officials say, for example, that they have the inherent power to investigate by wiretapping in national security cases, and that this now applies to domestic security. I do not believe they should have that right. They should have to get a warrant from a court authorizing the seizure of a person's phone conversations just as, under the Fourth Amendment to the Constitution, they have to get a warrant for any other search and seizure.

No one man and no one executive department should have the absolute

power to order government spying on how people use their right of free speech. This is what we mean by a government of laws and not of men.

The Senate Subcommittee on Constitutional Rights recently learned that military agents were sent across the country with notebooks, cameras and tape recorders. They were told to take note of the behavior and politics of Americans who were active on subjects of concern to the Administration. They entered churches, universities and meeting-places. They conducted surveillance over political party gatherings as easily as they did over the demonstrations of welfare mothers.

The Defense Department undertook to keep these files full of irrelevant information despite the guarantee of the Constitution protecting Americans in the exercise of their First Amendment rights. They did this despite the obvious truth that the very existence of such files would make people fearful about exercising their constitutional rights.

An interviewer asked me the other day how I would go about protecting the security of the country if I suddenly were placed in charge of it.

While I would strongly hope I would never be placed in such a difficult job, I told her one of the first things I would do is assure that when a government inquiry was made on a person, that first, it be necessary and relevant; secondly, that it be done by trained, professional investigators who understand human nature and the society we live in. Thirdly, I would issue regulations and work for laws which take account of the fact that people are sometimes darn fools; that they can say silly, foolish, passionate or harsh things without the slightest intent of acting on their words.

Next, I would try to spread a gospel of my own. That is my belief that while the Recording Angel drops a tear occasionally to wash out the record of our human inequities, there is no compassion to be found in computers. Nor is it to be found in all the new instruments for measuring man which the behavioral sciences and the new technology hold out to us.

Finally, I would try to assure that the power of making inquiries which could decide a person's job prospects or his reputation rested with people who understood that political activity at every level has always been the life blood of our democracy.

Sam J. Ervin, Jr., United States Senator from North Carolina, is chairman of the Subcommittee on Constitutional Rights. He made these remarks last week at a forum on "Privacy and the False Prophets."